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ORIGINAL  
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AUG 21 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

13 GILBERT VENTURA, SR., and  
14 TRACY D. VENTURA,

Plaintiffs,

v.

17 WELLS FARGO BANK, N.A.,

Defendant.

07 4309

CLASS ACTION

CLASS ACTION COMPLAINT FOR

1. Violations of the Equal Credit Opportunity Act; 15 U.S.C. § 1691
2. Violations of the Fair Housing Act; 42 U.S.C. § 3601
3. Violations of the Civil Rights Act, 42 U.S.C. § 1981; and
4. Violations of the Civil Rights Act, 42 U.S.C. § 1982.

DEMAND FOR JURY TRIAL

1. Plaintiffs Gilbert Ventura, Sr., and Tracy D. Ventura ("Plaintiffs"), by and through their attorneys, bring this action against Wells Fargo Bank, N.A. (referred to herein as "Wells Fargo" or "Defendant") seeking redress for racially discriminatory lending practices under the Equal Credit Opportunity Act, 15 U.S.C. § 1691, et seq. ("ECOA"), the Fair Housing Act, 42 U.S.C. § 3601 et seq. ("FHA"), and the Civil

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1 Rights Act, 42 U.S.C. §§ 1981 and 1982, on behalf of themselves and all others  
2 similarly situated.

3 **INTRODUCTION**

4 2. This class action challenges Defendant Wells Fargo's racially  
5 discriminatory mortgage lending practices. Defendant Wells Fargo has engaged in  
6 both intentional and disparate impact discrimination through its development and  
7 implementation of mortgage pricing policies and procedures that provide financial  
8 incentives to its authorized loan officers, mortgage brokers and correspondent lenders  
9 to make subjective decisions to increase interest rates and charge additional fees and  
10 costs to minority borrowers.

11 3. Defendant Wells Fargo's authorized loan officers, mortgage brokers and  
12 correspondent lenders are given discretion – and are actually encouraged and  
13 incentivized – to increase interest rates and charge additional fees to certain  
14 borrowers. These policies directly lead to minorities receiving home loans with  
15 higher interest rates and higher fees and costs than similarly situated non-minority  
16 borrowers.

17 4. As used in this Complaint, “minority” or “minorities” shall refer to all  
18 non-Caucasians and other minority racial groups protected under 42 U.S.C. §§ 1981,  
19 1982, and 3604, and 15 U.S.C. § 1691.

20 5. Plaintiffs bring this action on behalf of all minorities (hereinafter  
21 collectively referred to as the “Class” or “members of the Class”) who have entered  
22 into residential mortgage loan contracts that were financed or purchased by Defendant  
23 Wells Fargo, and who have been subjected to racial discrimination.

24 6. Plaintiffs seek injunctive, declaratory, and equitable relief and other  
25 remedies for Defendant Wells Fargo's racially discriminatory conduct.

26 **JURISDICTION AND VENUE**

27 7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, which gives  
28 this Court original jurisdiction over civil actions arising under federal law.

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1 8. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) because a  
2 substantial part of the events giving rise to Plaintiffs' and the Class's claims occurred  
3 in this District. Defendant's corporate headquarters are located in this District, and  
4 the practices complained of herein were formulated and structured in this District.

5 **PARTIES**

6 9. Plaintiffs Gilbert Ventura, Sr., and Tracy D. Ventura are Latino  
7 homeowners who reside at 1136 East Avenida Isabella, Casa Grande, AZ 85222.

8 10. Defendant Wells Fargo is a mortgage lender whose principal place of  
9 business is at 464 California St., San Francisco, CA 94104.

10 **FACTS**

11 **I. HISTORICAL DISCRIMINATION IN AMERICAN MORTGAGE**  
12 **LENDING**

13 11. Racial discrimination in America's mortgage lending industry has a long  
14 legacy. As this Complaint attests, that unfortunate history continues to this day due to  
15 discriminatory treatment of minority borrowers by mortgage banks such as Defendant  
16 Wells Fargo.

17 12. The Joint Center for Housing Studies at Harvard University conducted a  
18 study in 2005 called "The Dual Mortgage Market: The Persistence of Discrimination  
19 in Mortgage Lending," which summarizes that history well. It states that "[i]n the  
20 immediate post-World War II period, racial discrimination in mortgage lending was  
21 easy to spot. From government-sponsored racial covenants in the Federal Housing  
22 Administration (FHA) guidelines to the redlining practices of private mortgage  
23 lenders and financial institutions, minorities were denied access to home mortgages in  
24 ways that severely limited their ability to purchase a home. Today, mortgage lending  
25 discrimination is more subtle. . . . [M]ore than three decades after the enactment of  
26 national fair lending legislation, minority consumers continue to have less-than-equal  
27 access to loans at the best prices and on the best terms that their credit history, income,  
28 and other individual financial considerations merit."

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1       13. The federal Home Mortgage Disclosure Act ("HMDA") requires  
2 mortgage lenders to report information about the home loans they process each year.  
3 In 2005, lenders reported information on more than 30 million home loan applications  
4 pursuant to HMDA. In 1989, Congress required lenders to begin disclosing  
5 information about mortgage borrowers' race and ethnicity. In 2004, concerned with  
6 potential racial discrimination in loan pricing, and recognizing that racial or other  
7 types of discrimination can occur when loan officers and mortgage brokers have  
8 latitude in setting interest rates, the Federal Reserve Board began requiring lenders to  
9 also report information concerning rates, points, and fees, charged to borrowers on  
10 high-cost loans.

11       14. HMDA data for 2004 reveals profound loan pricing disparities between  
12 Hispanic borrowers and non-Hispanic whites even after controlling for borrowers'  
13 gender, income, property location, and loan amount. After accounting for those  
14 differences in the 2004 HMDA data, Hispanic borrowers were still almost twice as  
15 likely to receive a higher-rate home loan as non-Hispanic whites.  
16 (<http://www.responsiblelending.org/pdfs/Testimony-Ernst061306.pdf> (last viewed  
17 August 14, 2007).) In a speech last year, the Vice-Chairman of the Federal Deposit  
18 Insurance Corporation, Martin Gruenberg, discussed the 2004 HMDA data and  
19 observed that that data "clearly indicated" that Hispanics are more likely to receive  
20 high-cost home loans than are non-Hispanic whites.  
21 (<http://www.fdic.gov/news/news/speeches/archives/2006/chairman/spoct1806.html>  
22 (last viewed August 15, 2007).)

23       15. Likewise, HMDA data for 2005 shows that "for conventional home-  
24 purchase loans, the gross mean incidence of higher-priced lending was 54.7 percent  
25 for blacks and 17.2 percent for non-Hispanic whites, a difference of 37.5 percentage  
26 points." *Id.* at A159. The situation is similar for refinancings, where there is a  
27 difference of 28.3 percentage points between blacks and non-Hispanic whites. Avery,  
28 Brevoort, and Canner, Federal Reserve Bulletin, A124, A159.

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1 16. The Association of Community Organizations for Reform Now  
2 (ACORN) released a report entitled "The High Cost of Credit: Disparities in High-  
3 priced Refinanced Loans to Minority Homeowners in 125 American Cities," dated  
4 September 27, 2005, which found that "[i]n every metropolitan area where at least 50  
5 refinances were made to African-American homeowners, African-Americans were  
6 more likely to receive a high-cost loan than White homeowners."

7 17. Defendant Wells Fargo's lending practices are of a piece with the  
8 foregoing history.

9 **II. PAST AS PROLOGUE: DEFENDANT WELLS FARGO'S**  
10 **DISCRIMINATORY LENDING POLICIES**

11 **A. DEFENDANT WELLS FARGO'S RELATIONSHIPS WITH ITS**  
12 **LOAN OFFICERS, MORTGAGE BROKERS AND**  
13 **CORRESPONDENT LENDERS**

14 18. Defendant Wells Fargo originates and funds mortgage loans through loan  
15 officers, brokers and through a network of correspondent lenders. Loan officers,  
16 mortgage brokers and correspondent lenders that work with Defendant Wells Fargo  
17 broker and fund loans in collaboration with Defendant Wells Fargo and in  
18 conformance with Defendant Wells Fargo's credit-pricing policies and procedures.  
19 As Defendant Wells Fargo's website explains, mortgage brokers "match borrowers  
20 with lenders." (<https://www.wellsfargo.com/mortgage/glossary/m> (last viewed  
21 August 14, 2007).) Defendant Wells Fargo's website states that correspondent lenders  
22 "originate, underwrite, and close loans before sending them to Wells Fargo[.]"  
23 ([https://www.wellsfargo.com/com/third\\_party\\_mortgage/](https://www.wellsfargo.com/com/third_party_mortgage/)) (last viewed August 14,  
24 2007).)

25 19. Defendant Wells Fargo has followed – and continues to follow –  
26 discretionary loan pricing procedures that cause minority borrowers to pay subjective  
27 fees such as yield spread premiums and other mortgage-related finance charges at  
28 higher rates than similarly situated non-minority borrowers. Defendant Wells Fargo

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1 has intentionally discriminated against Plaintiff and Class Members through these  
2 policies and procedures – systematically giving them mortgage loans with less  
3 favorable conditions than were given to similarly situated non-minority borrowers.  
4 This pattern of discrimination is not the result of random or non-discriminatory  
5 factors. Rather, it is a direct result of Defendant Wells Fargo's mortgage lending  
6 policies and procedures.

7 20. Defendant Wells Fargo's authorized loan officers, mortgage brokers and  
8 correspondent lenders receive part or all of their compensation from Defendant Wells  
9 Fargo based on the interest rate charged to the borrower. Defendant Wells Fargo's  
10 loan officers, authorized brokers and correspondent lenders receive more  
11 compensation from Defendant Wells Fargo when they steer their clients into Wells  
12 Fargo loans with higher interest rates, and less compensation when they place their  
13 clients into Wells Fargo loans with lower interest rates.

14 21. Defendant Wells Fargo intentionally and actively implements this  
15 discriminatory credit-pricing policy in a number of ways.

16 22. Defendant Wells Fargo actively educates its loan officers and brokers in  
17 Defendant Wells Fargo's credit policies and procedures. Defendant Wells Fargo  
18 conducts weekly training "webinars" (i.e., interactive Internet seminars) for its brokers  
19 concerning its loan products where it disseminates to brokers "detailed information on  
20 [Defendant Wells Fargo's] product guidelines[.]"  
21 (<https://ilnet.wellsfargo.com/ildocs/ee/training.html> (last viewed on August 15,  
22 2007).) Defendant Wells Fargo also maintains an Internet site called "Broker's First"  
23 that supplies brokers with rate sheets, a "Broker Guide," and underwriting guidelines.

24 23. Defendant Wells Fargo also actively directs its loan officers and brokers  
25 in marketing Defendant Wells Fargo's loans. Defendant Wells Fargo provides its  
26 authorized brokers downloadable mortgage advertisements.  
27 ([https://ilnet.wellsfargo.com/ildocs/ee/marketing\\_tools.html](https://ilnet.wellsfargo.com/ildocs/ee/marketing_tools.html) (last viewed on August 7,  
28 2007).)

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1 24. These credit-pricing policies and procedures permit Defendant Wells  
2 Fargo's authorized loan officers, mortgage brokers and correspondent lenders  
3 subjectively to charge certain loan applicants yield spread premiums and other  
4 discretionary charges, including minority loan applicants.

5 25. This pattern of discrimination cannot be justified by business necessity,  
6 and could be avoided through the use of alternative policies and procedures that have  
7 less discriminatory impact and no less business efficacy.

8  
9 **B. DEFENDANT WELLS FARGO'S DISCRETIONARY CREDIT  
10 PRICING SYSTEM: DESIGNED TO DISCRIMINATE**

11 26. Defendant Wells Fargo discriminates through its authorized mortgage  
12 brokers. Authorized mortgage brokers act as Defendant Wells Fargo's agents in  
13 originating mortgage loans. Authorized mortgage brokers enter into agreements with  
14 Defendant Wells Fargo to accept loan applications on behalf of Defendant Wells  
15 Fargo; communicate to loan applicants financing terms and rates set by Defendant  
16 Wells Fargo; tell loan applicants about Defendant Wells Fargo's various financing  
17 options; and ultimately originate mortgage loans funded by Defendant Wells Fargo  
18 using Defendant Wells Fargo's forms and in accordance with Defendant Wells  
19 Fargo's policies and procedures.

20 27. Likewise with Defendant Wells Fargo's authorized correspondent lenders  
21 and loan officers, who also act as Defendant Wells Fargo's agents in originating loans.  
22 Correspondent mortgage lenders and loan officers that work with Defendant Wells  
23 Fargo make loans in accordance with Defendant Wells Fargo's credit policies and  
24 procedures. Defendant Wells Fargo funds correspondent-generated loans before or  
25 shortly after they go to closing.

26 28. Defendant Wells Fargo, then, funds loans originated by its loan officers,  
27 authorized mortgage brokers and correspondent lenders, sets the terms and conditions  
28 of credit on those loans, and shoulders part or all of the risk on such loans. Defendant

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1 Wells Fargo actively and intentionally enforces its credit policies through its  
2 authorized loan officers, mortgage brokers and correspondent lenders in a variety of  
3 ways. Among other things, Defendant Wells Fargo supplies its loan officers,  
4 correspondent lenders and mortgage brokers with an array of loan-related forms and  
5 agreements, including loan contracts, loan applications, and instructions on  
6 completing loan applications and contracts. And, as noted above, Wells Fargo  
7 actively trains its authorized brokers to follow Wells Fargo's policies and procedures,  
8 and reinforces that training with marketing support.

9 29. Once a loan applicant has provided credit information to Defendant  
10 Wells Fargo through a loan officer, mortgage broker or correspondent lender,  
11 Defendant Wells Fargo performs an initial objective credit analysis. At this point,  
12 Defendant Wells Fargo evaluates numerous risk-related credit variables, including  
13 debt-to-income ratios, loan-to-value ratios, credit bureau histories, debt ratios,  
14 bankruptcies, automobile repossessions, prior foreclosures, payment histories, credit  
15 scores, and the like.

16 30. Defendant Wells Fargo derives a risk-based financing rate from these  
17 objective factors, which Defendant Wells Fargo and others in the mortgage industry  
18 simply call the "par rate." (Defendant Wells Fargo's brokers and correspondent  
19 lenders can also estimate the par rates by referring to an applicant's credit bureau-  
20 determined credit score.)

21 31. Although Defendant Wells Fargo's initial analysis applies objective  
22 criteria to calculate this risk-related interest rate, Defendant Wells Fargo as a matter of  
23 policy and procedure authorizes its loan officers, brokers and correspondent lenders to  
24 mark up that rate later, and also impose additional non-risk-based charges including  
25 yield spread premiums, and other discretionary fees. Defendant Wells Fargo regularly  
26 communicates applicable par rates, authorized yield spread premiums, and other  
27 discretionary fees to its loan officers, brokers and correspondent lenders via "rate  
28 sheets" and other communications.



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1       32. Defendant Wells Fargo gives its loan officers, authorized mortgage  
2 brokers and correspondent lenders discretion to impose yield spread premiums and  
3 other subjective fees on borrowers. When borrowers pay yield spread premiums,  
4 Defendant Wells Fargo shares in additional income generated by the premium because  
5 the yield spread premium-affected borrower is locked into a higher interest rate going  
6 forward on their Wells Fargo loan than they would be if they had been placed in a par  
7 rate loan without a yield spread premium.

8       33. Defendant Wells Fargo's borrowers pay yield spread premiums and other  
9 discretionary fees that inflate their finance charges not knowing that a portion of their  
10 finance charges are non-risk-related.

11       34. Defendant Wells Fargo's policies and procedures concerning the  
12 assessment of yield spread premiums and other discretionary fees cause persons with  
13 identical or similar credit scores to pay differing amounts for obtaining credit. Such  
14 subjective loan pricing - which by design imposes differing finance charges on  
15 persons with the same or similar credit profiles - disparately impacts Defendant Wells  
16 Fargo's minority borrowers.

17       35. While Defendant Wells Fargo's use of a common credit policy for all  
18 loan applicants might appear to be racially neutral, Defendant Wells Fargo's use of  
19 yield spread premiums and other discretionary fees disproportionately and adversely  
20 affects minorities (relative to similarly situated non-minorities). Defendant Wells  
21 Fargo's credit policy causes minorities to pay disparately more discretionary finance  
22 charges than similarly situated non-minorities. As the HMDA data cited herein  
23 indicates, minorities are substantially more likely than similarly situated non-  
24 minorities to pay such charges.

25       36. Defendant Wells Fargo's credit policy is in fact intentionally  
26 discriminatory. As described above, Defendant Wells Fargo's credit pricing policy by  
27 design discriminates against minority borrowers.  
28

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1 **III. DEFENDANT WELLS FARGO IMPOSED DISCRIMINATORY FEES**  
2 **ON PLAINTIFF**

3 37. Defendant Wells Fargo's discriminatory credit pricing policy directly  
4 damaged Plaintiffs. On or about September 27, 2005, Plaintiffs refinanced their home  
5 with a mortgage loan issued by Defendant Wells Fargo in the amount of \$175,500.  
6 Phoenix Home Loans ("PHL"), was the mortgage broker on Plaintiffs' home  
7 refinancing.

8 38. According to their HUD-I closing statement (attached hereto as Exhibit  
9 1), Plaintiffs at closing were subjected to a charge described as "Mtg Broker Comp by  
10 WFB to Phoenix Home Loans" in the amount of \$2,632.50 on a "POC" basis (i.e.,  
11 paid outside of closing) by Defendant Wells Fargo. On information and belief, this  
12 fee was in fact a yield spread premium. This yield spread premium was assessed  
13 pursuant to Defendant Wells Fargo's credit pricing policy.

14 39. PHL and Defendant Wells Fargo knew that Plaintiffs were minority  
15 borrowers. The PHL employee who brokered Plaintiffs' Wells Fargo loan in  
16 conformance with Defendant Wells Fargo's discriminatory credit pricing policy was  
17 aware that Plaintiffs are Hispanics when brokering Plaintiffs' loan.

18 40. As a result of Defendant Wells Fargo's discriminatory conduct, Plaintiffs  
19 received a loan on worse terms with higher costs than similarly situated non-minority  
20 borrowers.

21 **CLASS ACTION ALLEGATIONS**

22 41. Plaintiffs repeat and re-allege each allegation above as if set forth herein  
23 in full.

24 42. This class action is brought pursuant to ECOA, the FHA and the Civil  
25 Rights Act by Plaintiffs on behalf of themselves and all minority borrowers (the  
26 "Class") who entered into residential mortgage loan contracts that were financed or  
27 purchased by Defendant Wells Fargo, and who were harmed by Defendant's  
28 discriminatory conduct.

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1 43. Plaintiffs sue on their own behalf, and on behalf of a class of persons  
2 under Rule 23(a) and (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure.

3 44. Plaintiffs do not know the exact size of the Class or identities of the  
4 members of the Class, since that information is in the exclusive control of Defendant  
5 Wells Fargo. Plaintiffs believe that the Class includes many thousands, or tens of  
6 thousands of individuals, who are geographically dispersed throughout the United  
7 States. Therefore, the Class is so numerous that joinder of all members is  
8 impracticable.

9 45. All members of the Class have been subjected to and affected by  
10 Defendant Wells Fargo's practice of assessing yield spread premiums and other  
11 discretionary fees on mortgage loans. There are questions of law and fact that are  
12 common to the Class, and that predominate over any questions affecting only  
13 individual members of the Class. These questions include, but are not limited to the  
14 following:

- 15 a. the nature and scope of Defendant Wells Fargo's policies and  
16 procedures concerning the assessment of yield spread  
17 premiums and other discretionary fees on mortgage loans it  
18 funds;
- 19 b. whether Defendant Wells Fargo discriminated against Class  
20 Members by charging them higher interest, fees, and costs,  
21 than Defendant Wells Fargo charges similarly situated non-  
22 minority borrowers;
- 23 c. whether Defendant Wells Fargo's intent in its discriminatory  
24 policies and procedures was racially motivated;
- 25 d. whether Defendant Wells Fargo can articulate any legitimate  
26 non-discriminatory reason for its policies and procedures;
- 27 e. whether Defendant Wells Fargo and its subsidiaries are  
28 creditors under the ECOA because, in the ordinary course of

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- 1 business, they participate in the decision of whether or not to
- 2 extend credit to consumers;
- 3 f. whether Defendant Wells Fargo's policies and procedures
- 4 regarding yield spread premiums and other discretionary fees
- 5 have a disparate impact on minority borrowers;
- 6 g. whether Defendant Wells Fargo has any business justification
- 7 for its policies and procedures.
- 8 h. whether there is a less discriminatory alternative to these
- 9 policies and procedures;
- 10 i. whether Defendant Wells Fargo devised and deployed a
- 11 scheme or common course of conduct that acted to deceive
- 12 Plaintiff and members of the Class;
- 13 j. whether the Court can enter declaratory and injunctive relief;
- 14 and
- 15 k. the proper measure of disgorgement or monetary relief.
- 16 46. Plaintiffs' claims are typical of the claims of the Class, and do not
- 17 conflict with the interests of any other members of the Class in that both Plaintiffs,
- 18 and the other members of the Class, were subjected to the same yield spread
- 19 premiums and other discretionary fees that have disproportionately affected minority
- 20 borrowers.
- 21 47. Plaintiffs will fairly and adequately represent the interests of the Class.
- 22 Plaintiffs are committed to vigorous prosecution of the Class's claims, and have
- 23 retained attorneys who have extensive experience in consumer protection and credit
- 24 discrimination actions.
- 25 48. Defendant Wells Fargo has acted or refused to act on grounds generally
- 26 applicable to the Class, thereby making appropriate final injunctive relief or
- 27 corresponding declaratory relief with respect to the class as a whole.
- 28

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1 49. A class action is superior to other methods for the speedy and efficient  
2 adjudication of this controversy. A class action regarding the issues in this case does  
3 not create any problems of manageability.

4 **ACCRUAL, FRAUDULENT CONCEALMENT, CONTINUING**  
5 **VIOLATION, AND EQUITABLE TOLLING**

6 50. Plaintiffs and Class Members did not know, and could not reasonably  
7 have known, that they would receive from Defendant Wells Fargo mortgage loans  
8 with worse terms and higher costs and fees than non-minorities. Their claims did not  
9 accrue until shortly before the filing of this action.

10 51. Defendant Wells Fargo's discriminatory conduct was inherently self-  
11 concealing. Defendant Wells Fargo knew that Plaintiffs and Class Members could not  
12 determine the relationship between the terms, fees, and costs of their loans to those  
13 available to non-minorities. Defendant Wells Fargo knew that the terms, fees, and  
14 costs provided to minorities, unbeknownst to them, were substantially worse than the  
15 loans provided to non-minorities.

16 52. Defendant Wells Fargo has not released or provided information about its  
17 discrimination against Plaintiffs and Class Members, and has actively and fraudulently  
18 concealed its discriminatory practices.

19 53. As a result of the foregoing, Plaintiffs and Class Members in the exercise  
20 of due diligence could not have reasonably discovered the discriminatory practices,  
21 and did not do so until just recently. For the reasons alleged above, the members of  
22 the Class still do not know that they have been and continue to be injured by  
23 Defendant Wells Fargo's discriminatory conduct.

24 54. Defendant Wells Fargo's discriminatory conduct is continuing in nature,  
25 and Defendant Wells Fargo has committed discriminatory acts throughout the  
26 limitations period.

27 55. There is a substantial nexus between the acts of discrimination occurring  
28 within the limitation periods prior to filing suit, and the acts of discrimination before

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1 that time. The acts involve the same type of discrimination and are recurring, not  
2 isolated events.

3 56. Defendant Wells Fargo specifically misled Plaintiffs and Class Members  
4 into believing that the mortgage-related terms, fees, and costs they were offered were  
5 fair, reasonable, and the same as offered to non-minorities, and took steps to conceal  
6 its fraudulent and unfair conduct.

7 57. The statute of limitations applicable to any claims that Plaintiffs or other  
8 Class Members have brought or could bring as a result of the unlawful and fraudulent  
9 concealment and course of conduct described herein, have been tolled as a result of  
10 Defendant Wells Fargo's fraudulent concealment. In addition, Plaintiffs and the Class  
11 did not and could not have discovered their causes of action until the time alleged  
12 below, thereby tolling any applicable statute of limitations.

13 **COUNT I**

14 **RACIAL DISCRIMINATION (42 U.S.C. § 1981)**

15 58. Plaintiffs repeat, re-allege, and incorporate the allegations contained in  
16 paragraphs 1 through 57 above as if fully set forth herein.

17 59. Defendant Wells Fargo intentionally discriminated against Plaintiffs and  
18 Class Members by charging higher interest rates and other fees and costs than were  
19 charged to similarly situated non-minority borrowers.

20 60. Defendant Wells Fargo unlawfully discriminated against Plaintiffs and  
21 Class Members in (i) formation of contracts, (ii) making, performance, modification,  
22 and termination of contracts, (iii) the enjoyment of all benefits, privileges, terms and  
23 conditions of the contractual relationship, and/or (iv) conduct that interferes with the  
24 right to establish and enforce contract obligations.

25 61. Defendant Wells Fargo's actions violate 42 U.S.C. § 1981, as well as the  
26 rights of Plaintiffs and the Class under the Fifth, Thirteenth, and Fourteenth  
27 Amendments to the Constitution of the United States.  
28

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1 62. Plaintiffs and Class Members are entitled to injunctive and declaratory  
2 relief and damages, or make whole equitable relief as a result of Defendant Wells  
3 Fargo's discriminatory conduct.

4 63. At no time has Defendant Wells Fargo undertaken corrective action to  
5 ameliorate its racially discriminatory practices. Defendant Wells Fargo continues to  
6 reap the profits of its discriminatory practices and continues to discriminate.  
7 Defendant Wells Fargo's conduct as alleged herein was intentional, willful, wanton,  
8 reckless, malicious, outrageous, or otherwise aggravated beyond mere negligence.  
9 Defendant Wells Fargo has acted with malice and reckless indifference to the  
10 federally protected rights of Plaintiffs and members of the Class. As a result,  
11 Plaintiffs and members of the Class are entitled to punitive damages.

12 **COUNT II**

13 **RACIAL DISCRIMINATION (42 U.S.C. § 1982)**

14 64. Plaintiffs repeat, re-allege, and incorporate the allegations contained in  
15 paragraphs 1 through 63 above as if fully set forth herein.

16 65. Section 42 U.S.C. § 1982 provides that all citizens of the United States  
17 "shall have the same right, in every State and Territory, as is enjoyed by White  
18 citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal  
19 property."

20 66. Defendant Wells Fargo has discriminated against Plaintiffs and the Class  
21 with respect to their home mortgage loans by charging Plaintiffs and the Class higher  
22 interest rates and other discretionary fees than Defendant Wells Fargo has charged  
23 similarly situated non-minority consumers. As a result of Defendant Wells Fargo's  
24 conduct, Plaintiffs and the Class have not had the same right as Caucasians to inherit,  
25 purchase, sell, hold, and convey real property. Defendant Wells Fargo has thereby  
26 violated 42 U.S.C. § 1982.

27 67. Defendant Wells Fargo's violation of 42 U.S.C. § 1982 was intentional  
28 and malicious.

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1 68. As a proximate result of Defendant Wells Fargo's violation of 42 U.S.C.  
2 § 1982, Plaintiffs and members of the Class have been injured, and are entitled to  
3 injunctive and declaratory relief and damages, or make whole equitable relief. In  
4 addition, Defendant Wells Fargo's conduct as alleged herein was intentional, willful,  
5 wanton, reckless, malicious, outrageous, or otherwise aggravated beyond mere  
6 negligence. Defendant Wells Fargo acted with malice and reckless indifference to the  
7 federally protected rights of Plaintiffs and members of the Class. As a result,  
8 Plaintiffs and members of the Class are entitled to punitive damages.

9 **COUNT III**

10 **VIOLATION OF THE FAIR HOUSING ACT (42 U.S.C. §§ 3601 – 3619)**

11 69. Plaintiffs repeat, re-allege and incorporate the allegations in paragraphs 1  
12 through 68 above as if fully set forth herein.

13 70. Mortgage lending and the providing of residential mortgage loans is a  
14 "residential real estate-related transaction" within the meaning of the FHA. 42 U.S.C.  
15 § 3605(b).

16 71. By imposing higher interest rates and other discretionary fees on  
17 residential mortgage loans to Plaintiffs and Class Members than it imposed on non-  
18 minority mortgage borrowers, Defendant Wells Fargo has discriminated against  
19 Plaintiffs and members of the Class concerning their ability to participate in real  
20 estate-related transactions, and in the terms and conditions of such transactions, in  
21 violation of the FHA. 42 U.S.C. § 3605(a).

22 72. In addition, Defendant Wells Fargo's pricing policies and procedures  
23 (including yield spread premiums), which provide financial incentives to its mortgage  
24 brokers and correspondent lenders to make subjective decisions to increase interest  
25 rates and charge additional fees and costs, had a disparate impact upon Plaintiffs and  
26 Class Members.



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1 73. As a proximate result of Defendant Wells Fargo's violation of 42 U.S.C.  
2 § 3605, Plaintiffs and members of the Class have been injured and are entitled to  
3 injunctive and declaratory relief and damages, or make whole equitable relief.

4 74. In addition, Defendant Wells Fargo's conduct as alleged herein was  
5 intentional, willful, wanton, reckless, malicious, outrageous, or otherwise aggravated  
6 beyond mere negligence. Defendant Wells Fargo acted with malice and reckless  
7 indifference to the federally protected rights of Plaintiffs and members of the Class.  
8 As a result, Plaintiffs and members of the Class are entitled to punitive damages.

9 75. Moreover, Defendant Wells Fargo continues to discriminate in violation  
10 of the FHA against members of the Class every time Defendant Wells Fargo provides  
11 a home mortgage loan as described herein. If not enjoined from such violation by the  
12 Court, Defendant Wells Fargo will continue to engage in conduct that disregards the  
13 rights of Plaintiffs and members of the Class, and cause Plaintiffs and members of the  
14 Class irreparable injury for which there is no adequate remedy at law. 42 U.S.C. §  
15 3613(c).

16 76. Plaintiffs and members of the Class ask this Court to declare the rights of  
17 the parties herein regarding Defendant Wells Fargo's obligation to participate in credit  
18 transactions without discriminating against applicants for credit on the basis of the  
19 applicants' race.

20 **COUNT IV**

21 **VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT**

22 **(15 U.S.C. §§ 1691 - 1691f)**

23 77. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1  
24 through 76 above as if fully set forth herein.

25 78. Defendant Wells Fargo engages in credit transactions through its  
26 offering, granting, and purchasing of residential mortgage loans.  
27  
28

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1 79. By imposing higher interest rates and other discretionary fees on  
2 residential mortgage loans to Plaintiffs and Class Members than it imposed on non-  
3 minority mortgage borrowers, Defendant Wells Fargo has discriminated against  
4 Plaintiffs and members of the Class with respect to a credit transaction on the basis of  
5 race in violation of the ECOA. 15 U.S.C. § 1691(a).

6 80. In addition, Defendant Wells Fargo's pricing policies and procedures  
7 (including yield spread premiums), which provide financial incentives to its mortgage  
8 brokers and correspondent lenders to make subjective decisions to increase interest  
9 rates and charge additional fees and costs, have a disparate impact on Plaintiffs and  
10 Class Members.

11 81. As a proximate result of Defendant Wells Fargo's violation of 15 U.S.C.  
12 § 1691, Plaintiffs and members of the Class have been injured and are entitled to  
13 injunctive and declaratory relief and damages, or make whole equitable relief.

14 82. In addition, Defendant Wells Fargo's conduct as alleged herein was  
15 intentional, willful, wanton, reckless, malicious, outrageous, or otherwise aggravated  
16 beyond mere negligence. Defendant Wells Fargo acted with malice and reckless  
17 indifference to the federally protected rights of Plaintiffs and members of the Class.  
18 As a result, Plaintiffs and members of the Class are entitled to punitive damages.

19 83. Moreover, Defendant Wells Fargo continues to discriminate in violation  
20 of the ECOA against Class Members every time Defendant Wells Fargo provides a  
21 home mortgage loan as described herein. If not enjoined from such violation by the  
22 Court, Defendant Wells Fargo will continue to engage in conduct that disregards the  
23 rights of Plaintiffs and members of the Class, and cause Plaintiffs and members of the  
24 Class irreparable injury for which there is no adequate remedy at law. 15 U.S.C. §  
25 1691(e).

26 84. Plaintiffs and members of the Class ask this Court to declare the rights of  
27 the parties herein regarding Defendant Wells Fargo's obligation to participate in credit  
28

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1 transactions without discriminating against applicants for credit on the basis of the  
2 applicants' race.

3 **PRAYER FOR RELIEF**

4 WHEREFORE PREMISES CONSIDERED, Plaintiffs requests the following  
5 relief:

6 A. An order determining that the action is a proper class action pursuant to  
7 Rule 23 of the Federal Rules of Civil Procedure;

8 B. A Judgment awarding Plaintiffs and Class Members costs and  
9 disbursements incurred in connection with this action, including reasonable attorneys'  
10 fees, expert witness fees and other costs;

11 C. A Judgment granting extraordinary equitable and/or injunctive relief as  
12 permitted by law or equity, including rescission, restitution, reformation, attaching,  
13 impounding, or imposing a constructive trust upon, or otherwise restricting, the  
14 proceeds of Defendant's ill-gotten funds to ensure that Plaintiffs and Class Members  
15 have an effective remedy;

16 D. A Judgment awarding damages, including punitive damages, to Plaintiffs  
17 and Class Members;

18 E. A Judgment granting declaratory and injunctive relief and all relief that  
19 flows from such injunctive and declaratory relief; and

20 F. A Judgment or other Order granting such other and further relief as the  
21 Court deems just and proper including, but not limited to, recessionary relief and  
22 reformation.

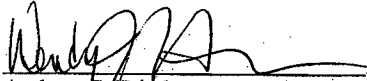
23 **JURY TRIAL DEMANDED**

24 85. Plaintiff demands a trial by jury on all issues so triable.  
25  
26  
27  
28

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1 DATED this 21<sup>st</sup> day of August, 2007.

2  
3 BONNETT, FAIRBOURN,  
4 FRIEDMAN, & BALINT, P.C.

5   
6 Andrew S. Friedman  
7 Wendy J. Harrison  
8 2901 North Central Avenue, Suite 1000  
9 Phoenix, Arizona 85012

10 CHAVEZ & GERTLER, L.L.P.  
11 Mark A. Chavez  
12 42 Miller Avenue  
13 Mill Valley, California 94941

14 Attorneys for Plaintiff  
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## **EXHIBIT 1**

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SETTLEMENT CHARGES		ESCROW FEE NUMBER	01/7/03/2008	1702
Based on Price \$ @ % =				
Division of Commission (line 700) follows:				
701. \$	to	Paid from		
702. \$	to	Borrower's		
\$	to	Funds at		
703. Commission paid at settlement		Settlement		
704.				
No. Items payable in connection with this loan:				
801. Loan Origination Fee 1.5% to Phoenix Home Loans		2,632.50		
802. Loan Discount Fee				
803. Appraisal Fee to Phoenix Home Loans		400.00		
804. Credit Report to Phoenix Home Loans		14.75		
805. Lenders Inspection Fee				
806. Mortgage Insurance Application Fee				
807. Assumption Fee				
808. Underwriting Fee to Wells Fargo Bank, N.A.		495.00		
809. Processing Fee to Phoenix Home Loans		995.00		
810. Flood Certification to Wells Fargo Bank, N.A.		18.00		
811. **See attached for breakdown		78.00		
Interest from 09/27/05 to 10/01/05 @ \$33.42/day (4 days)		133.68		
901. Interest from 09/27/05 to 10/01/05 @ \$33.42/day (4 days)				
902. Mortgage Insurance Premium				
903. Hazard Insurance Premium				
904.				
905.				
1001. Hazard Insurance 7 months @ \$46.54 per month		325.78		
1002. Mortgage Insurance				
1003. City Property Taxes				
1004. County Property Taxes 2 months @ \$134.99 per month		269.98		
1005. Annual Assessments				
1006.				
1007.				
1008. Aggregate Adjustment months @ \$		135.00		
1101. Settlement or closing fee to Transamerica Title Insurance Company		280.00		
1102. Abstract or title search				
1103. Title examination				
1104. Title insurance binder				
1105. Document preparation				
1106. Notary fees to On the Run Notary		100.00		
1107. Attorney's Fees				
(includes above item numbers: )				
1108. Title Insurance				
(includes above item numbers: )				
1109. Lender's coverage \$ 175,000.00		488.00		
1110. Owner's coverage \$				
Lender's coverage \$				
Lender's coverage \$				
1111. Sr. & L. ARM End's to Transamerica Title Insurance Company		150.00		
1112. Counter Fee to Transamerica Title Insurance Company		40.00		
1113. EDoc Fee to Transamerica Title Insurance Company		25.00		
1201. Recording Fees:				
1202. City/County tax/stamps				
1203. State tax/stamps				
1204. City Transfer Tax				
1205. County Transfer Tax				
1206. Recording Service Fee to Transamerica Title Insurance Company		30.00		
1207. Recording of Deeds to Transamerica Title Insurance Company		20.00		
1301. Survey to				
1302. Pest Inspection				
1303. 1st Half 2006 Property Taxes to Pinel County Treasurer		805.87		
1304. Account Payoff to Capital One Bank		1,840.00		
1305. Account Payoff to CUSA Bank		358.00		
1306. Account Payoff to GEMM Care Credit		1,583.00		
1307. **See attached for breakdown		5,089.00		
1400. Total Settlement Charges (Enter on line 103, Section J -and- line 502, Section K)		16,795.58		0.00

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Transnational Title Insurance Company  
7310 N. 16th St.  
Suite 135  
Phoenix, AZ 85020  
FINAL

8. TYPE OF LOAN: ☒ P/A ☐ F/A ☐ CONV. INS.  
9. ESCROW FILE NUMBER: 01478635-238 T02 7. LOAN NUMBER: 0147839203  
6. MORTGAGE INSURANCE CASE NUMBER:

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "P.O.D." were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME OF BORROWER: Gilbert Ventura Sr. and Tracy D. Ventura

ADDRESS OF BORROWER: 1136 East Avenida Isabella  
Casa Grande, AZ 85222

E. NAME OF SELLER: LANDAMERICA TRANSACTION  
BY: [Signature]

ADDRESS OF SELLER:

F. NAME OF LENDER: Wells Fargo Bank, N.A.  
ADDRESS OF LENDER: 2701 Wells Fargo Way  
Minneapolis MN 55487-9000

G. PROPERTY LOCATION: 1136 East Avenida Isabella  
Casa Grande, AZ 85222  
Pinel 505-46-2450  
Lot(s) 227, of Rancho Grande Unit 5 Replat Cab C 81d 077; Sec 4-8S-6E

H. SETTLEMENT AGENT: Transnational Title Insurance Company  
PLACE OF SETTLEMENT: 7310 N. 16th St., Suite 135, Phoenix, AZ 85020

I. SETTLEMENT DATE: 09/27/2005 PRORATION DATE: 09/27/2005 FUNDING DATE: 09/27/2005

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
101. Contract Sales Price		401. Contract Sales Price	
102. Personal Property		402. Personal Property	
103. Settlement charges to Borrower (line 1400)	15,795.66	403.	
104. Payoff to National City Bank	132,871.24	404.	
105.		405.	
Adjustments For Items Paid By Seller In Advance:		Adjustments For Items Paid By Seller In Advance:	
106. City/Town Taxes		406. City/Town Taxes	
107. County Taxes		407. County Taxes	
108. Assessments		408. Assessments	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
120. Gross Amount Due from borrower:	148,666.80	420. Gross Amount Due to Seller	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	175,500.00	502. Settlement charges to Seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Cash Payment & Closing Costs		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller:		Adjustments For Items Unpaid By Seller:	
210. City/Town Taxes		510. City/Town Taxes	
211. County Taxes		511. County Taxes	
212. Assessments		512. Assessments	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower	175,500.00	520. Total Reductions In Amount Due Seller	
301. Gross amount due from Borrower (line 120)	148,666.80	601. Cash True Settlement to/from Seller:	
302. Less amount paid by/for Borrower (line 220)	175,500.00	601. Gross amount due to Seller (line 420)	
303. Cash TO Borrower:	26,833.20	602. Less reductions in amount due Seller (line 52)	
		603. Cash TO/FROM Seller:	0.00

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Attachments:

Escrow Number:

01478336-236-102

BREAKDOWN OF NEW LOANS		
Description	Buyer Amount	Seller Amount
Wells Fargo Bank, N.A., 2701 Wells Fargo Way, Minneapolis MN 55407-8000, Loan# 01478392	175,500.00	
Total of New Loans:	175,500.00	

ADDITIONAL FEES/PAYMENTS CONNECTION WITH SALE		
Description	Buyer Amount	Seller Amount
812. Tax Service Fee to Wells Fargo Bank, N.A.	78.00	
813. Mtg Broker Comp by WFB to Phoenix Home Loans (Lender (\$2,632.50) POC)		
Total as shown on HUD Page 2 Line #811.	78.00	

HUD-REQUIRED BREAKDOWN OF ADDITIONAL SETTLEMENT CHARGES		
Description	Buyer Amount	Seller Amount
1308. Account Payoff to The HelpCard Process	4,069.00	
1309. Account Payoff to Capital One Bank	456.00	
1310. Account Payoff to RO Wiley Home Furniture	313.00	
1311. Account Payoff to Macy	231.00	
Total as shown on HUD Page 2 Line #1307.	5,069.00	



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Escrow Number: 01479835-238 T02	
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Payoff to: National City Bank  
Payoff Department  
3232 Newmark Drive  
Miamisburg, OH 45342

Loan #: 992958-1

Description	Amount
Principal Balance	132,871.24
Total Payoff	132,871.24

Total as shown on HUD line #104.

132,871.24